

Applicants : J. Dyll, C.P. Romano, P.D. Olivo, and R.M. Roth  
Serial No. : 10/060,941  
Filed : January 29, 2002  
Page 7

**Boone** 69 (original): The mixed cell culture of claim 68, wherein the mixed cell culture further comprises a fourth cell culture comprising cells containing a fourth subgenomic viral replication system.

#### Remarks

Claims 1-10, 26, 27, 55-64, 68 and 69 are now pending. Claims 55-64, 68 and 69 are allowed, claims 2 and 27 are objected to, and claims 1, 3-10 and 26 stand rejected. Claims 1, 3, 8, 9, 10, 26, 62, 63 and 64 are amended to more particularly point out and distinctly claim the invention.

#### Claim Objections

On page 2 of the March 24, 2003 Office Action, claims 8, 9, 10, 62, 63 and 64 are objected to because of various informalities. Those informalities are corrected in the amendments to those claims. Accordingly, withdrawal of those objections is respectfully requested.

#### Rejections under 35 U.S.C. 112

Claims 3 and 26 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite.

Claim 3 is asserted to be indefinite for not defining the role of the cell culture not containing a subgenomic viral replication system in the claimed method. Claim 3 as amended specifically recites that the cell culture not containing a subgenomic viral replication system is prepared in step (a). Since step (b) recites that the candidate antiviral agent is added to each cell culture, it is clear that the agent is also added to the cell culture not containing a subgenomic viral replication system in the method of claim 3. The cell culture not containing a subgenomic viral replication system is also clearly

Applicants : J. Dyll, C.P. Romano, P.D. Olivo, and R.M. Roth  
Serial No. : 10/060,941  
Filed : January 29, 2002  
Page 8

incubated in step (c). Thus, claim 3, as amended, specifically establishes precisely the role of the cell culture not containing a subgenomic viral replication system in that claim.

Claim 26 is objected to as being confusing. That claim is amended as suggested in the Office Action. Applicants believe that the claim as amended is not confusing.

Based on the amendments to claims 3 and 26, and the above discussion, withdrawal of the rejections under 35 U.S.C. 112, second paragraph, is respectfully requested.

#### Rejections under 35 U.S.C. 102(e)

Claims 1 and 4-8 stand rejected under 35 U.S.C. 102(e) as being anticipated by US 2002/0034532 A1, to Capon et al. It is asserted that the anticipation is due to claim 1 encompassing the execution of the claimed method on the two different subgenomic viral replication systems sequentially.

Claim 1 as amended, by virtue of the word "then" after steps (a) and (b), is clearly limited to the execution of the claimed method with both cell cultures simultaneously. Since Capon et al. does not teach or suggest that assay of two different cell cultures containing subgenomic viral replication systems can or should be performed simultaneously, applicants assert that Capon et al. does not anticipate or make obvious claim 1 as amended, or dependent claims 4-8.

Based on the amendment to claim 1 and the above discussion, applicants respectfully request withdrawal of the rejection of claims 1 and 4-8 under 35 U.S.C. 102(e).

#### Rejections under 35 U.S.C. 103(a)

Claim 3 stands rejected under 35 U.S.C. 103(a) or 35 U.S.C. 102(e) as being obvious or anticipated, respectively, over Capon et al. It is asserted that Capon

anticipates claim 1 and that having a control culture to claim 1 as recited in claim 3, is obvious because having such controls are standard scientific practice.

Claims 9 and 26 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over Capon et al. in view of U.S. Pat. No. 5,723,319 to King et al. It is asserted that King et al. discloses a hepatitis B subgenomic replication system and that the combination of King et al. and Capon et al. provides three different subgenomic replication systems specified in claim 9, in cell culture for drug testing.

Claims 9, 10 and 26 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over Capon et al. in view of U.S. Pat. No. 6,270,958 to Olivo et al. It is asserted that Olivo et al. teaches subgenomic viral replication systems for a variety of negative strand viruses and their use for screening compounds for antiviral activity, and when combined with Capon et al., the use of the viral cultures of at least three of the specified viruses for antiviral screening is recited.

Applicants request reconsideration and withdrawal of the rejections under 35 U.S.C. 103(a) based on the claim 1 amendment and the following discussion. Claim 1 as amended recites the simultaneous screening of antiviral agents on at least two cell cultures containing subgenomic viral replication systems. None of the cited references disclose or suggest a simultaneous screening using more than one cell culture having a subgenomic viral replication system.

To sustain a rejection for obviousness, the Patent Office must establish, *inter alia*, that the cited references recite each element of the rejected claims. See, e.g., MPEP 2143.03 and references cited therein. Since the cited references, alone or in combination do not recite or suggest the simultaneous screening aspect of amended claim 1 (to which all other claims rejected for obviousness are dependent), the current rejections under 35 U.S.C. 103(a) cannot stand.

Applicants : J. Dyall, C.P. Romano, P.D. Olivo, and R.M. Roth  
Serial No. : 10/060,941  
Filed : January 29, 2002  
Page 10

In light of the claim 1 amendment and the above discussion, applicants request withdrawal of the rejections under 35 U.S.C. 103(a).

Conclusion

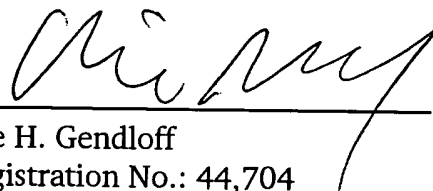
In light of the claim amendments and the above discussion, applicants respectfully request withdrawal of all rejections and objections and passage of the current claims 1-10, 26, 27, 55-64, 68 and 69 to allowance. If there are any minor matters preventing that result, applicants request that Examiner Wortman contact the undersigned attorney.

It is believed that no fee is due with this filing. However, if there are any unanticipated fees required to maintain pendency of this application, authorization is hereby given to charge any such deficiency to Deposit Account No. 01-1785.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN  
Attorneys for Applicant  
90 Park Avenue  
New York, New York 10016  
(212) 697-5995

Dated: New York, New York  
June 16, 2003

By:   
Elie H. Gendloff  
Registration No.: 44,704